



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2017-0303]

RIN 1625-AA00

Safety Zone; Tuskegee Airmen River Days Air Show, Detroit River,
Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Detroit River in the vicinity of Detroit, MI. This zone is intended to restrict and control movement of vessels in a portion of the Detroit River. This zone is necessary to protect spectators and vessels from potential hazards associated with the Tuskegee Airmen River Days Air Show.

DATES: This temporary final rule is effective from 12:30 p.m. on June 23, 2017 until 9 p.m. on June 26, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0303 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this

rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313-568-9564, or e-mail Tracy.M.Girard@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this air show until there was insufficient time

remaining before the event to publish an NPRM.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. Having reviewed the application for a marine event submitted by the sponsor on March 14, 2017, the Captain of the Port Detroit (COTP) has determined that an aircraft aerial display proximate to a gathering of watercraft poses a significant risk to public safety and property. Such hazards include potential aircraft malfunctions, loud noise levels, and waterway distractions. Therefore, the COTP is establishing a safety zone around the event location to help minimize risks to safety of life and property during this event.

IV. Discussion of the Rule

This rule establishes a safety zone from 12:30 p.m. on June 23, 2017 through 9 p.m. on June 26, 2017. The safety zone will encompass all U.S. navigable waters of the Detroit River between the following two lines extending from 70 feet off the bank to the US/Canadian demarcation line: the first line is drawn directly across the channel at position 42°19.444'N, 083°03.114'W (NAD 83); the second line, to the north, is drawn directly across the channel at position 42°19.860'N 083°01.683'W (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through

a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Detroit River from 12:30 p.m. on June 23, 2017 until 9 p.m. on June 26, 2017. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast

Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section

above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than three hours per day that will prohibit entry within the 1 mile by .2 mile air show site. It is categorically excluded under section 2.B.2, figure 2-1, paragraph 34(g) of the Instruction. A Record of Environmental Consideration (REC) supporting this determination is available

in the docket where indicated in the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0303 to read as follows:

§ 165.T09-0303 Safety Zone; Tuskegee Airmen River Days Air show; Detroit, MI.

(a) Location. A safety zone is established to include all U.S. navigable waters of the Detroit River between the following two lines extending 70 feet off the bank to the US/Canadian demarcation line: the first line is drawn directly across the channel at position 42°19.444'N, 083°03.114'W (NAD 83); the second line, to the north, is drawn directly across the channel, at position 42°19.860'N 083°01.683'W (NAD 83).

(b) Enforcement period. The regulated area described in paragraph (a) of this section will be enforced from 12:30 p.m. thru 3 p.m. on June 23, 2017 and June 24, 2017; 3 p.m. through 5:30 p.m. on June 25, 2017; and from 5 p.m. through 7:30 p.m. on June 26, 2017.

(c) Regulations. (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit, or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Detroit is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the Captain of the Port

Detroit or his on-scene representative to obtain permission to enter or operate within the safety zone. The Captain of the Port Detroit or his on-scene representative may be contacted via VHF Channel 16 or at 313-568-9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

Dated: May 5, 2017.

Scott B. Lemasters,
Captain, U. S. Coast Guard,
Captain of the Port Detroit.

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